



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 29, 1996

Mr. John Steiner  
Division Chief  
City of Austin  
Department of Law  
P.O. Box 1088  
Austin, Texas 78767-1088

OR96-0104

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 35514.

The City of Austin (the "city") received an open records request for certain personnel records of a named police officer.<sup>1</sup> You inform this office that the police officer for whom the personnel file is requested will testify against the requestor's client during a criminal trial. You contend that information in the civil service personnel file, which is generally open and available to the public, in this case, may be withheld from required public disclosure pursuant to section 552.103(a) of the Government Code, commonly referred to as the litigation exception. You argue that the information in the officer's personnel file is related to issues that may be litigated and that these are records which the requestor should obtain through discovery, if at all. You have submitted for our review the responsive documents.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a

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<sup>1</sup>We note that the requestor specifically stated he was not seeking certain personal information about the officer, rendering moot your arguments under sections 552.101 and 552.117 of the Government Code.

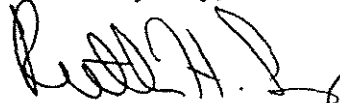
political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To show that section 552.103 is applicable, the city must demonstrate that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. This office has confirmed that the criminal defendant is currently on deferred adjudication for the alleged offense of resisting arrest. We therefore conclude that the city may withhold the information pursuant to section 552.103 of the Government Code until the defendant has served his probationary period or until such time that all litigation pertaining to the criminal charges has otherwise concluded. Of course, once information has been obtained by all parties to the litigation through discovery or otherwise, or the litigation has ended, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/ch

Ref: ID# 35514

Enclosures: Submitted documents

cc: Mr. Kevin R. Madison  
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(w/o enclosures)